IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.3.2007

CORAM

THE HON'BLE MR.JUSTICE P.D.DINAKARAN
AND
THE HON'BLE MR.JUSTICE P.P.S.JANARTHANA RAJA

T.C.(A) Nos.1005 & 1006 of 2005

Thirupathy Kumar Khemka 36, Wallajah Road Chennai 600 002	..	Appellant in T.C.No.1005/05
Raj Kumar Khemka 36, Wallajah Road Chennai 600 002	..	Appellant in T.C.No.1006/05

Vs.

The Commissioner of Income Tax Central, Chennai.	..	Respondent in both appeals

---

Appeals under Section 260A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal, Chennai 'B' Bench dated 16.6.2005 in ITA Nos.1291/Mds/2000 & 1293/Mds/2000 for the assessment year 1996-97. against the order of the Commissioner of Income Tax (Appeals)-II Chennai 34 dated 15/5/2000 in IT/Appeal No. 193/99-2000, 191/99-2000 against the Assessment order of Deputy Commissioner of Income Tax, Central Circle I(1) chennai dated 30.09.1999 in P.A. NO. AAKPK/1249F/96-97 PA NO. 47-066-PY-1230/96-97 respectively

---

For Appellants : Mr.C.V.Rajan
For Respondent : Mrs.Pushya Sitaraman, Sr.S.C.

WEB COPY

J U D G M E N T

(Delivered by P.D.DINAKARAN,J.)

The vexed, but substantial question of law that arises for consideration in the respective appeals is

"Whether the Appellate Tribunal is right in law in upholding the levy of penalty of Rs.3,07,302/- on the view that it was incumbent on the appellant to prove

https://hcservices.ecourts.gov.in/hcservices/

beyond shadow of doubt the existence of a bona fide belief that the interest under Section 244A was not taxable?"

under the following facts and circumstances of the case.

2.1. Both the appeals are related to the same assessment year with identical facts, preferred by two different assessees. The appellants/assessees are individuals assessed to tax. For the assessment year 1996-97, the assessees filed their return of income on 29.11.1996. The returns were processed under Section 143(1)(a) of the Income Tax Act, 1961 (for brevity "Act"), and notice under Section 143(2) of the Act was issued for scrutiny. After hearing the representative of the assessees, the assessment was completed under Section 143(3) of the Act.

2.2. In the assessment order under Section 143(3) of the Act, in the case of both the assessees, the following additions were made to the returned total income, viz. (i) interest under Section 244A of the Act granted for the assessment year 1993-94 and (ii) credit in SB account maintained with Canara Bank. Hence, consequential penalty proceedings were initiated by the Assessing Officer under Section 271(1)(c) of the Act, for concealment of income and furnishing inaccurate particulars of income. An opportunity was given to the assessees to show cause against the proposed penalty and their representatives were heard. However, the explanation offered by the assessees' representatives that they had no intention to conceal the above mentioned income, but the omissions were due to oversight, was not accepted. Consequently, holding that the penalty under Section 271(1)(c) of the Act is squarely applicable on both additions, levied a minimum penalty of 100% as under, by order even dated 30.9.1999 respectively.

(i) in T.C.No.1005 of 2007 -

Total Undisclosed Income:	
i. 244A interest received for the asst. year 93-94	Rs.10,52,820/-
ii. Unexplained credits in SB account	Rs. 4,938/-
	Rs.10,57,758/-

100% of tax sought to be evaded on Rs.10,57,758/- = 40% of Rs.10,57,758/-
= Rs.4,23,103/-

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

(ii) in T.C.No.1006 of 2007 -

Total Undisclosed Income:	
i. 244A interest received for the asst. year 93-94	Rs.7,64,640/-
ii. Unexplained credits in SB account	Rs. 3,615/-
	Rs.7,68,255/-

100% of tax sought to be evaded on Rs.7,68,255/- = 40% of Rs.7,68,255/-
= Rs.3,07,302/-

2.3. On appeal by the assessees, before the Commissioner, the penalty levied was modified by order even dated 15.5.2000 in the respective case, confirming penalty with regard to the addition of interest under Section 244A granted for the assessment year 1993-94, but deleting the penalty with regard to the addition relating to the unexplained credits in SB account.

2.4. Aggrieved by the confirmation of penalty and the addition of income with regard to the interest under Section 244A of the Act granted for the year 1993-94 in the respective cases, the assessees preferred appeals before the Tribunal, who, by order even dated 16.6.2005 confirmed the order of the Commissioner. Hence, the present appeals raising the aforementioned substantial question of law.

3. The centre of controversy that arises for our consideration, as focussed in the vexed question of law, is whether it was incumbent on the part of the assessees to prove the existence of the bona fide belief that the interest under Section 244A was not taxable, beyond the shadow of doubt, in the context of levying penalty under Section 271(1)(c) of the Act.

4.1. It is apposite to refer Section 244A of the Act, which reads as follows:

> "244A. Interest on refunds.--(1) Where refund of any amount becomes due to the assessee under this Act, he shall, subject to the provisions of this section, be entitled to receive, in addition to the said amount, simple interest thereon calculated in the following manner, namely:-

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

(a) where the refund is out of any tax collected at source under section 206C or paid by way of advance tax or treated as paid under section 199, during the financial year immediately preceding the assessment year, such interest shall be calculated at the rate of one per cent for every month or part of a month comprised in the period from the 1st day of April of the assessment year to the date on which the refund is granted:

Provided that no interest shall be payable if the amount of refund is less than ten per cent of the tax as determined under sub-section (1) of section 143 or on regular assessment;

(b) in any other case, such interest shall be calculated at the rate of one per cent for every month or part of a month comprised in the period or periods from the date or, as the case may be, dates of payment of the tax or penalty to the date on which the refund is granted.

Explanation.--For the purposes of this clause, "date of payment of tax or penalty" means the date on and from which the amount of tax or penalty specified in the notice of demand issued under section 156 is paid in excess of such demand.

(2) If the proceedings resulting in the refund are delayed for reasons attributable to the assessee, whether wholly or in part, the period of the delay so attributable to him shall be excluded from the period for which interest is payable, and where any question arises as to the period to be excluded, it shall be decided by the Chief Commissioner or Commissioner whose decision thereon shall be final.

(3) Where, as a result of an order under sub-section (3) of section 143 or section 144 or section 147 or section 154 or section 155 or section 250 or section 254 or section 260 or section 262 or section 263 or section 264 or an order of the Settlement Commission under sub-section (4) of section 245D, the amount on which interest was payable under sub-section (1) has been increased or reduced, as the case may be, the interest shall be increased or reduced accordingly, and in a case where the interest is reduced, the Assessing Officer shall serve on the assessee a notice of demand in the prescribed form specifying the amount of the excess interest paid and

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

requiring him to pay such amount; and such notice of demand shall be deemed to be a notice under section 156 and the provisions of this Act shall apply accordingly.

(4) The provisions of this section shall apply in respect of assessments for the assessment year commencing on the 1st day of April, 1989, and subsequent assessment years."

4.2. Section 244A of the Act confers a right on the assessee to claim interest on refunds, as they are entitled for the same statutorily and the revenue is under a statutory obligation to pay such interest to the assessees. The assessees, who thus availed such statutory benefit, undoubtedly, are, again, statutorily liable to pay tax on such income derived by way of interest under Section 244A of the Act. But, in the instant case, both the assessees, who received interest under Section 244A for the assessment year 1993-94 have not paid the tax on the same and consequently, such income derived by way of interest under Section 244A of the Act were made as additions in the assessment order passed under Section 143(3) of the Act, forming basis for initiating penalty proceedings under Section 271(1)(c) of the Act.

4.3. In this regard, it is apt to refer Section 271(1)(c) of the Act, which reads as under.

"271. Failure to furnish returns, comply with notices, concealment of income, etc.--

(1) If the Assessing Officer or the Deputy Commissioner (Appeals) or the Commissioner (Appeals) in the course of any proceedings under this Act, is satisfied that any person--

(a) ...

(b) ...

(c) has concealed the particulars of his income or furnished inaccurate particulars of such income,

he may direct that such person shall pay by way of penalty,--

(i) Omitted by DTL (Amend.) Act, 1989 wef 1.4.1989;

(ii) in the cases referred to in clause (b), in addition to any tax payable by him, a sum which shall not be less than one thousand rupees but which may extend to twenty-five thousand rupees for each such failure ;

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

(iii) in the cases referred to in clause (c), in addition to any tax payable by him, a sum which shall not be less than, but which shall not exceed twice, the amount of tax sought to be evaded by reason of the concealment of particulars of his income or the furnishing of inaccurate particulars of such income;

Explanation 1.--Where in respect of any facts material to the computation of the total income of any person under this Act,--

(A) such person fails to offer an explanation or offers an explanation which is found by the Assessing Officer or the Deputy Commissioner (Appeals) or the Commissioner (Appeals) to be false, or

(B) such person offers an explanation which he is not able to substantiate and fails to prove that such explanation is bona fide and that all the facts relating to the same and material to the computation of his total income have been disclosed by him,

then, the amount added or disallowed in computing the total income of such person as a result thereof shall, for the purposes of clause (c) of this sub-section, be deemed to represent the income in respect of which particulars have been concealed.

Explanation 2.--Where the source of any receipt, deposit, outgoing or investment in any assessment year is claimed by any person to be an amount which had been added in computing the income or deducted in computing the loss in the assessment of such person for any earlier assessment year or years but in respect of which no penalty under clause (iii) of this sub-section had been levied, that part of the amount so added or deducted in such earlier assessment year immediately preceding the year in which the receipt, deposit, outgoing or investment appears (such earlier assessment year hereafter in this Explanation referred to as the first preceding year) which is sufficient to cover the amount represented by such receipt, deposit or outgoing or value of such investment (such amount or value hereafter in this Explanation referred to as the utilised amount) shall be treated as the income of the assessee, particulars of which had been concealed or inaccurate particulars of which had been furnished for the first preceding year ; and where the amount so added or deducted in the first

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

preceding year is not sufficient to cover the utilised amount, that part of the amount so added or deducted in the year immediately preceding the first preceding year which is sufficient to cover such part of the utilised amount as is not so covered shall be treated to be the income of the assessee, particulars of which had been concealed or inaccurate particulars of which had been furnished for the year immediately preceding the first preceding year and so on, until the entire utilised amount is covered by the amounts so added or deducted in such earlier assessment years.

Explanation 3.--Where any person who has not previously been assessed under this Act, fails, without reasonable cause, to furnish within the period specified in sub-section (1) of section 153 a return of his income which he is required to furnish under section 139 in respect of any assessment year commencing on or after the 1st day of April, 1989, and until the expiry of the period aforesaid, no notice has been issued to him under clause (i) of sub-section (1) of section 142 or section 148 and the Assessing Officer or the Deputy Commissioner (Appeals) or the Commissioner (Appeals) is satisfied that in respect of such assessment year such person has taxable income, then, such person shall, for the purposes of clause (c) of this sub-section, be deemed to have concealed the particulars of his income in respect of such assessment year, notwithstanding that such person furnishes a return of his income at any time after the expiry of the period aforesaid in pursuance of a notice under section 148.

Explanation 4.--For the purposes of clause (iii) of this sub-section, the expression "the amount of tax sought to be evaded",--

(a) in any case where the amount of income in respect of which particulars have been concealed or inaccurate particulars have been furnished exceeds the total income assessed, means the tax that would have been chargeable on the income in respect of which particulars have been concealed or inaccurate particulars have been furnished had such income been the total income ;

(b) in any case to which Explanation 3 applies, means the tax on the total income assessed ;

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

(c) in any other case, means the difference between the tax on the total income assessed and the tax that would have been chargeable had such total income been reduced by the amount of income in respect of which particulars have been concealed or inaccurate particulars have been furnished.

Explanation 5.--Where in the course of a search under section 132, the assessee is found to be the owner of any money, bullion, jewellery or other valuable article or thing (hereafter in this Explanation referred to as assets) and the assessee claims that such assets have been acquired by him by utilising (wholly or in part) his income,--

(a) for any previous year which has ended before the date of the search, but the return of income for such year has not been furnished before the said date or, where such return has been furnished before the said date, such income has not been declared therein ; or

(b) for any previous year which is to end on or after the date of the search,

then, notwithstanding that such income is declared by him in any return of income furnished on or after the date of the search, he shall, for the purposes of imposition of a penalty under clause (c) of sub-section (1) of this section, be deemed to have concealed the particulars of his income or furnished inaccurate particulars of such income,

unless,--

(1) such income is, or the transactions resulting in such income are recorded,--

(i) in a case falling under clause (a), before the date of the search ; and

(ii) in a case falling under clause (b), on or before such date,

in the books of account, if any, maintained by him for any source of income or such income is otherwise disclosed to the Chief Commissioner or Commissioner

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

before the said date ; or

(2) he, in the course of the search, makes a statement under sub-section (4) of section 132 that any money, bullion, jewellery or other valuable article or thing found in his possession or under his control, has been acquired out of his income which has not been disclosed so far in his return of income to be furnished before the expiry of time specified in sub-section (1) of section 139, and also specifies in the statement the manner in which such income has been derived and pays the tax, together with interest, if any, in respect of such income.

Explanation 6.--Where any adjustment is made in the income or loss declared in the return under the proviso to clause (a) of sub-section (1) of section 143 and additional tax charged under that section, the provisions of this sub-section shall not apply in relation to the adjustment so made."

4.4. No doubt, the assessees were given an opportunity and their representatives were heard, who stated that they had no intention and the omission was an oversight. The Assessing Officer, however, not convinced with either of the reasons, levied penalty under Section 271(1)(c) of the Act. While doing so, the Assessing Officer, of course, observed that the assessees had not proved beyond the shadow of doubt the existence of the bona fide belief that the interest under Section 244A of the Act was not taxable.

4.5. It is a settled law that in economic offences, the statutory liability to pay either duty or tax is nothing but a strict liability where the question of proving beyond the shadow of doubt of one's existence of bona fide belief that such duty or interest is not taxable does not arise. It goes without saying that any violation to the law or rules relating to the economic offences, either relating to the payment of duty or the tax as the case may be, the theory of mens rea is not attracted. In such matters, the rules of interpretation contemplates a strict interpretation rather than liberal and wider interpretation.

4.6. The Rule of Mens rea has to be established beyond all reasonable doubts in criminal cases, but it is not so in a case of an economic offence. The classical view that "no mens rea, no crime" has long ago been eroded, especially regarding economic crimes. In economic offences, the notion that a penalty or a punishment cannot be cast in the form of an absolute or no fault liability but must be preceded by mens rea must be rejected. A

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

rule of strict liability or absolute liability should be imposed without insisting mens rea to deal with such socio economic crimes, vide S.Bagavathy v. State of Tamil Nadu & another (2007 (1) LW 892).

4.7. Mens rea is not an essential ingredient for contravention of the provisions of the civil Act. Unless the language of the statute indicates the need to establish the element of mens rea, it is generally sufficient to prove that a default in complying with the statute has occurred and it is wholly unnecessary to ascertain whether such a violation was intentional or not. The breach of civil obligation which attracts a penalty under the provisions of an Act would immediately attract the levy of penalty irrespective of the fact whether the contravention was made by the defaulter with any guilty intention or not, vide Chairman, SEBI v. Shriram Mutual Fund ((2006) 5 SCC 361).

5.1. In the instant case, both the assessees were quite conscious of the receipt of the income derived by way of interest, for the delay in refunding the excess tax paid by them, by the revenue. The assessees, having exercised such statutory right based on their statutory entitlement by virtue of Section 244A of the Act, ought to have shown the same in their returns of income and consequently, the question of lack of intention or the defence of oversight does not arise. The assessees, having exercised their right under a statute, are also bound by the duty under the statute to pay tax on such income derived by way of interest by the revenue.

5.2. Jurisprudentially, the right and duty have to go together. It is imprudent to claim the right alone, escaping from the duty, nor to insist on the duty ignoring any right. If this basic principle is understood in a proper perspective, the question whether it was incumbent on the part of the assessee to prove the existence of the bona fide belief that the interest under Section 244A was not taxable, beyond the shadow of doubt, does not arise at all.

सत्यमेव जयते
WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

5.3. As already observed, the source of income is only from the revenue themselves. Therefore, the assessees are quite aware that either wittingly or unwittingly, they cannot escape from the statutory duty of payment of tax on such income. Such a failure of duty on the part of the assessees, in our considered opinion, constitutes an element of concealment, warranting levy of penalty under Section 271(1)(c) of the Act, inasmuch as the assessees who had gained the benefit under the statute cannot be permitted to state that they had no intention to suppress such gain, nor omission of such income in the returns was by oversight, as, both legally and logically it follows that they had a knowledge of the receipt of income from the respondent. But for the pointing out by the respondent as to the said additions, while passing the assessment order under Section 143(3) of the Act for the assessment year 1996-97, the said income as well as the tax liability would have remained unearthed. Therefore, under such circumstances, we see every justification for initiating the proceedings for penalty under Section 271(1)(c) of the Act and levying penalty, based on factual and concurrent finding by the authorities below. Accordingly, we have no hesitation to answer the question against the assessees.

The appeals are dismissed. No costs.

Kpl

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To
The Assistant Registrar,
Income Tax Appellate Tribunal
Bench 'B"
Rajaji Bhavan, 3rd Floor,
Besant Nagar, Madras 90

2. The Secretary,
Central Board of Directary

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

New Delhi
3. The Commissioner of Income Tax (Appeals II) Chennai 34

4. The Commissioner of Income Tax,
Central Chennai

5. The Deputy Commissioner of Income Tax Central Circle (1)
Chennai

+ one cc to Mrs. Pushya Sitaraman, Advocate sr no. 19296

nsm(co)
nm(05.04.07)

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/